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10 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2013-114**

13 **DEVIN NICOLE SMITH;**
14 **AKA DEVIN NICOLE DITALLO**
15 **9460 N. Calle El Milagro**
Oro Valley, AZ 85704

A C C U S A T I O N

16 **Registered Nurse License No. 783015**

17 Respondent.

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19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Executive Officer of the Board of Registered Nursing, State of
23 California.

24 2. On or about September 1, 2010, the Board of Registered Nursing issued
25 Registered Nurse License Number 783015 to Devin Nicole Smith, also known as Devin Nicole
26 Ditallo (Respondent). The Registered Nurse License was in full force and effect at all times
27 relevant to the charges brought herein and will expire on September 30, 2012, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and

1 duties of the licensee in question, the record of conviction of the crime shall be
2 conclusive evidence of the fact that the conviction occurred, but only of that fact,
3 and the board may inquire into the circumstances surrounding the commission of
4 the crime in order to fix the degree of discipline or to determine if the conviction
is substantially related to the qualifications, functions, and duties of the licensee in
question.

5 As used in this section, "license" includes "certificate," "permit,"
6 "authority," and "registration."

7 9. Section 2761 of the Code states:

8 The board may take disciplinary action against a certified or licensed
9 nurse or deny an application for a certificate or license for any of the following:

10 (a) Unprofessional conduct, which includes, but is not limited to, the
11 following:

12

13 (f) Conviction of a felony or of any offense substantially related to
14 the qualifications, functions, and duties of a registered nurse, in which event the
record of the conviction shall be conclusive evidence thereof.

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16 10. Section 2762 of the Code states:

17 In addition to other acts constituting unprofessional conduct within the
18 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct
for a person licensed under this chapter to do any of the following:

19

20 (b) Use any controlled substance as defined in Division 10
(commencing with Section 11000) of the Health and Safety Code, or any
21 dangerous drug or dangerous device as defined in Section 4022, or alcoholic
22 beverages, to an extent or in a manner dangerous or injurious to himself or herself,
any other person, or the public or to the extent that such use impairs his or her
ability to conduct with safety to the public the practice authorized by his or her
license:

23 (c) Be convicted of a criminal offense involving the prescription,
24 consumption, or self-administration of any of the substances described in
subdivisions (a) and (b) of this section, or the possession of, or falsification of a
25 record pertaining to, the substances described in subdivision (a) of this section, in
26 which event the record of the conviction is conclusive evidence thereof.

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11. Section 2765 of the Code states:

A plea or verdict of guilty or a conviction following a plea of *nolo contendere* made to a charge substantially related to the qualifications, functions and duties of a registered nurse is deemed to be a conviction within the meaning

of this article. The board may order the license or certificate suspended or revoked, or may decline to issue a license or certificate, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

REGULATORY PROVISIONS

12. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

13. California Code of Regulations, title 16, section 1445 states:

....

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

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1. (4) Whether the licensee has complied with any terms of parole,
2. probation, restitution or any other sanctions lawfully imposed against the
3. licensee.

4. (5) If applicable, evidence of expungement proceedings pursuant
5. to Section 1203.4 of the Penal Code.

6. (6) Evidence, if any, of rehabilitation submitted by the licensee.

7. **COST RECOVERY**

8. 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request
9. the administrative law judge to direct a licensee found to have committed a violation or
10. violations of the licensing act to pay a sum not to exceed the reasonable costs of the
11. investigation and enforcement of the case.

12. **FIRST CAUSE FOR DISCIPLINE**

13. **(February 21, 2012 Criminal Conviction for DUI on February 17, 2011)**

14. 15. Respondent has subjected her registered nurse license to disciplinary action
15. under Code sections 490 and 2761, subdivision (f), in that she was convicted of a crime that is
16. substantially related to the qualifications, functions, and duties of a registered nurse. The
17. circumstances are as follows:

18. a. On or about February 21, 2012, in a criminal proceeding entitled *The*
19. *People of the State of California v. Devin Nicole Tallo*, in San Diego County Superior Court,
20. Central Division, case number M127154, Respondent was convicted on her plea of guilty of
21. violating Vehicle Code (VC) section 23152, subdivision (b), driving with a blood alcohol
22. concentration (BAC) of 0.08 percent or more, a misdemeanor. Charges for violation of VC
23. section 23152, subdivision (a), driving under the influence of alcohol (DUI), and section 12500,
24. subdivision (a), driving while privilege is suspended, misdemeanors, were dismissed as a result
25. of a plea bargain.

26. b. As a result of the conviction, on or about February 21, 2012, Respondent
27. was sentenced to five years summary probation and ordered to complete 10 days work under the
28. public service program, with credit for two days served and an option to render 64 hours of
volunteer work at a non-profit organization in lieu of the balance of eight days under the public

1 service program. Respondent was also ordered to enroll in and complete a three-month first
2 conviction alcohol program and a Mothers Against Drunk Drivers (MADD) Victim's Impact
3 Panel, and pay \$2,064.00 in fines.

4 c. The facts that led to the conviction are that on or about February 17,
5 2011, Respondent was in a traffic collision with an off-duty California Highway Patrol (CHP)
6 Officer at the corner of Presidio Drive and Taylor Street in San Diego, California. A responding
7 San Diego County Sheriff's Department (SDCSD) Deputy immediately saw Respondent's
8 sway, very unsteady gait, and relaxed face. The Deputy noticed the smell of alcohol coming
9 from Respondent's person, her slurred speech, repeating questions, and her pause before
10 answering questions. During the interview, Respondent admitted to coming from a friend's
11 house and to drinking two medium glasses of wine. Respondent agreed to take the series of field
12 sobriety tests, which she failed. At the SDCSD headquarters, Respondent consented to a breath
13 test. However, Respondent purposely sabotaged her breath test attempts leaving the Deputy no
14 choice but to require a blood test, which registered .19 percent BAC.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)**

17 16. Respondent has subjected her registered nurse license to disciplinary action under
18 Code section 2762, subdivision (b), in that on or about February 17, 2011, as described in
19 paragraph 15, above, she used alcoholic beverages to an extent or in a manner that was
20 potentially dangerous and injurious to herself and to others when she operated a motor vehicle
21 while impaired with a significantly high BAC.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct - Conviction of an Alcohol Related Criminal Offense)**

24 17. Respondent has subjected her registered nurse license to disciplinary action
25 under Code section 2762, subdivision (c), in that on or about February 21, 2012, as described in
26 paragraph 15, above, Respondent was convicted of a criminal offense involving the
27 consumption of alcohol.

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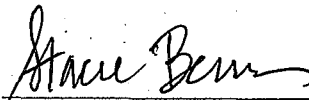
PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 783015, issued to Devin Nicole Smith; aka Devin Nicole Ditallo;
2. Ordering Devin Nicole Smith to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED:

August 9, 2012

for 

LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
State of California
State of California
Complainant

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